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13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15 (Fresno Division)

16 In re:) Case No: 11-11802
17 Dyar and Whitten Partnership,) Chapter 7 Case
18 1839 Rose Street) DC No. CWC-3
19 Porterville, CA 93257)
20 Tax ID/EIN: 95-6521249) Date: November 3, 2011
21) Time: 10:00 a.m.
22 Debtor.) Place: 1300 18th Street
23 First Floor
24 Bakersfield, CA

25 MOTION FOR AUTHORIZATION TO
26 SELL REAL PROPERTY OF THE ESTATE
27 (502 County Line Road, Delano, CA)

28 To: The Honorable W. Richard Lee, U.S. Bankruptcy Judge:

29 Randall Parker, the duly qualified and acting trustee in
30 this case, pursuant to 11 U.S.C. § 363(b) respectfully
31 represents:

32 1. This Court has jurisdiction of this matter under 28
33 U.S.C. Sections 1334 and 157(a).

34 2. On February 17, 2011, the Debtor filed a petition under
35 Chapter 11 of the Bankruptcy Code, in the above-entitled Court.

1 The case was converted to Chapter 7 on April 14, 2011. Randall
2 Parker has been appointed Trustee in the case.

3 3. Among the assets which constitute property of the estate
4 is the Debtor's interest in the real property located at 502
5 County Line Road, Delano, CA 93215, APN 410-020-02-00-1 and APN
6 410-040-01-00-4 ("the Subject Property"), more particularly
7 described in the Preliminary Title Report of Placer Title Company
8 dated July 19, 2011, attached to the List of Exhibits filed
9 concurrently herewith.

10 4. The Trustee has entered into an agreement with Juvenal
11 Montemayor (the "Buyer"), 31110 Schuster Road, Delano, CA 93215,
12 or nominee, for the sale of the Subject Property for
13 \$1,290,000.00 in cash or certified funds upon the terms and
14 conditions described in a Commercial Property Purchase Agreement
15 and Joint Escrow Instructions dated July 25, 2011, as amended by
16 Counter Offer No. 1 dated July 28, 2011, Counter Offer No. 2
17 dated August 3, 2011 and Counter Offer No. 3 dated August 11,
18 2011 (the "Agreement") which is annexed to the List of Exhibits
19 filed concurrently herewith.

20 5. The Buyer has deposited the sum of \$40,500.00 with the
21 Trustee to be held in trust pending court approval of the sale.
22 The Buyer is purchasing the Subject Property on an "As Is, Where
23 Is" basis. Said sale is without representation or warranties of
24 any kind, express or implied, including, without limitation,
25 representations of merchantability and/or fitness for any
26 particular purposes. The sale is subject to Bankruptcy Court
27 approval and subject to third party overbids at the hearing on
28 this matter. Prior to the hearing on this matter, all third

1 party bidders must deposit \$40,500.00 in certified funds with the
2 Trustee and agree to execute a contract with terms and conditions
3 identical to the Agreement in order to be eligible to make
4 overbids at the hearing. All deposits of unsuccessful bidders
5 are fully refundable.

6 6. Under the terms of the Agreement, Grubb & Ellis/ASU &
7 Associates, the Trustee's licensed real estate broker, will
8 receive a brokerage fee of 2.5% of the sales price and Wise
9 Realty, Inc., the Buyer's licensed real estate broker, will
10 receive a brokerage fee of 2.5% of the sales price.

11 7. The Trustee is informed and believes that the bankruptcy
12 estate will not incur any adverse tax consequences from the sale.

13 8. Said sale will fully pay all liens, encumbrances, taxes,
14 etc. on the Subject Property. The costs and expenses of such
15 sale include, but are not limited to, all closing costs, all
16 property taxes and assessments and the real estate brokers'
17 commissions.

18 9. Said sale represents the Trustee's best efforts to sell
19 the Subject Property for the highest possible price and the
20 Trustee believes that the proposed sale is in the best interest
21 of the estate.

22 WHEREFORE, the Trustee, Randell Parker, prays for an Order
23 of this Court:

24 1. Authorizing the Trustee, pursuant to 11 U.S.C. § 363(b)
25 to sell the Debtor's interest in the real property located at 502
26 County Line Road, Delano, CA 93215, APN 410-020-02-00-1 and APN
27 410-040-01-00-4, to Juvenal Montemayor, or nominee, for the sum
28 of \$1,290,000.00 in cash or certified funds upon the terms and
conditions in the above-described Agreement;

1 2. Authorizing the Trustee to pay through escrow all costs
2 and expenses of the sale including but not limited to, all liens,
3 encumbrances, closing costs, all property taxes and assessments
4 and the payment of a real estate commission in the amount of 2.5%
5 of the sale price to Grubb & Ellis/ASU & Associates, the
6 Trustee's licensed real estate broker and the payment of a real
7 estate commission in the amount of 2.5% of the sale price to Wise
8 Realty, Inc., the Buyer's licensed real estate broker.

9 3. Authorizing such overbids as may be submitted at the
10 time of the hearing on this Motion, subject to such terms and
11 conditions as may be required by the Trustee and/or the Court;

12 4. Authorizing the execution and delivery by the Trustee of
13 any and all documents which may be necessary or convenient to
14 conclude the transaction;

15 5. Granting such other and further relief as the court
16 deems proper.

17 Dated: 9-19-11

Respectfully Submitted,

~~Law Office of Carl W. Collins~~

Carl W. Collins
Carl W. Collins, Esq.
Attorney for Trustee